Sectt. II-27—45,006—19-10-36.

Development (19 40) Department.

MS SERIES.

G.O. No. 1765

Dated 31 7 40

[Despatch Abstract.]

Fisheries

Fish curing yard - Moolky - Acquisition of site

Additional compensation and costs - Expenditure

FISHERIES **DEPARTMENT.**

Received ..... 19 *Registered* D. 19363/V 19

17.7.40

Subject.

FISH CURING YARDS - Moolky - site acquired · Increased award.

ENCLOSURES.
No. Copy of Collr's letter & judgement
Spare copies .....

No.2077-F/40-1,

Station CHEPAUK, MADRAS, *Dated the* 15th July 1940

From (Name) Diwan Bahadur Dr.B.Sundara Raj, M.A., Ph.D.,
(Designation) Director of Fisheries.

To The Secretary to the Government of Madras,
Development Department.

Sir,

(R)

Ref: G.O.No.MS. 545-Development dated the 6th March 1937.

I enclose a copy of letter No.B.3-520/40 dated 28th June 1940 (with enclosure) from the Collector of South Kanara requesting me to make arrangements for depositing a sum of Rs.221/14/3 in the Court and for payment of Rs.43/2/- incurred by the Government Pleader for conducting the case. The first sum is towards additional amount of compensation awarded by the Sub

Judge

Judge of Mangalore with 15% solatium and interest due on both these amounts from 6th April 1938.

In G.O.No.Ms.545, Development dated 6th March 1937 the Government sanctioned a sum of Rs.170/- only for the acquisition of the site required for the location of Moolky fish curing yard. This amount has already been spent. In the circumstances now explained by the Collector in his letter I have the honour to request you to be so good as to obtain the sanction of Government, for the expenditure of Rs.265/-/3 under the head "Loans and advances by Provincial Governments - g. Miscellaneous loans and advances - D Loans relating to the Fisheries Department - Advances to fish curers for storage sheds" in the current year and to instruct the Accountant General to permit the expenditure in anticipation of provision of funds in the course of the year. This expenditure is recoverable from the curers by way of cess.

I have the honour to be,
Sir,
Your most obedient servant,

C.R Nabesan

for DIRECTOR OF FISHERIES.

Copy of letter Ref.B.3-520-40, dated the 28th June 1940 from the Collector of South Kanara, to the Director of Fisheries, Madras.

LAND ACQUISITION - South Kanara - Mangalore Taluk Hejmadi village - S.No.73/3-B - Fish curing yard, Mulki - L.A.C. No.1 of 1937 on the file of Revenue Divisional Officer, Mangalore - Adverse decision by Subordinate Court - Additional compensation etc. awarded - Requisition to remit.

I forward herewith a copy of the judgment in L.A. Case No.5 of 1938 on the file of Subordinate Judge, South Kanara, Mangalore on a reference made by the Land Acquisition Officer, Mangalore, under Section 19 of the L.A.Act in respect of S.No.73/3B of Hejmadi village acquired for a fish curing yard. The Subordinate Judge has, in paragraph 11 of his order, directed payment of an additional compensation of Rs.170/- towards land value with 15% solatium and interest on both at 6% per annum from 6/4/38 upto the date of deposit. The Government Pleader reports that he has spent a sum of Rs.43/2/- towards costs which excludes his fee. I am separately referring to the Board the question of filing an appeal to the High Court against the Subordinate Judge's decision. In the meanwhile, the amount decreed has to be deposited in Court. I, therefore, request you kindly to deposit at once the decree amount which comes to Rs.221/14/3 as detailed in the margin and intimate the fact of having done so to me at an early date. Please also arrange to pay the costs of Rs.43/2/- incurred by the Government Pleader. I will let you know later the amount of Pleader's fee due to the Government Pleader

Additional amount of compensation awarded by the District Judge	Rs.	170	-	-
15% solatium	Rs.	25	8	-
Interest at 6% from 6-4-38 to 5.7.40	Rs.	26	6	3
Total	Rs.	221	14	3

IN THE COURT OF THE SUBORDINATE JUDGE OF SOUTH KANARA.

Present: Sri D.S.Raja Rau, B.A., B.L.,
PRINCIPAL SUBORDINATE JUDGE.

THURSDAY, THE 21st DAY OF DECEMBER 1939.

Land Acquisition Case No.5 of 1938.

(L.A. C.No.1 of 1937 on the file of the Revenue Divisional and Land Acquisition Officer, Mangalore).

BETWEEN:--

THE REVENUE DIVISIONAL OFFICER, MANGALORE ..Petition (L.A. Officer)

Respondent (Claimant)

This case coming on for trial on Friday the 1st, and for trial and hearing on Friday the 8th day of December 1939, after notice to the Collector and claimant, and upon perusing the reference, the statement filed by the respondent, ~~xx~~ and the material papers in the case, and upon hearing the arguments of Sri P.Vasudeva Rao, advocate for the respondent, and of Sri K.P.N.Das for Sri M.K.Nambiyar, Government pleader for the petitioner, and having stood over to this day for consideration, the court passed the following

O R D E R-

1. This is a reference under Section 18 of the Land Acquisition Act, in respect of the enhancement of the compensation claimed by the claimant, for the acquisition of the S.No.73/3-B of Hejamadi village. The Land acquired is of an extent of acre 1-60 cents. The Land Acquisition

Officer

Officer has allowed Rs.130/- as compensation for the land calculating value of the land at Rs.81-4-0 per acre. He has also allowed Rs.16/8/0 for five palmyra trees at Rs.3/- each, and 2 cart-loads of jungle growth at 12 annas each. To the above is added 15 per cent. solatium Rs.21/15/7. The total that is therefore available for being paid to claimant is Rs.168-7-7.

2. The claimant has objected to the above valuation and has claimed Rs.750/- compensation for the land, Rs.50/- for the five palmyra trees, Rs.8/- for the two cart-loads of jungle growth, and Rs.300/- for damages on account of the acquisition injuriously affecting the rest of his property. He has also claimed 15 per cent. solatium.

3. Out of the above items, the enhancement relating to trees need not be seriously considered because the claimant does not seem to have laid any additional claim towards the trees either in his written statement filed before the L.A. Officer on 13/9/1937, or in his petition under Section 18 filed before the L.A. Officer on 4/4/1938. There is no reason why in the statement filed in this court the additional compensation should have been claimed for the trees. I therefore hold that the compensation awarded by the L.A.Officer in respect of the trees is adequate.

4. As regards the land, the claimant appears to have claimed at the rate of Rs.1,000/- per acre ~~xxxxx~~ on 11/5/1937. Subsequently in his written statement dated 13/9/1937 which is adopted in his petition under Section 18 of the L.A.Act, dated 4/4/1938, he has limited his claim for the value of the land 1-60 cents to Rs.750/-. His contention seems to be that the same land which was acquired by the Government had been let by

him

him on mulgeni for an annual rental of Rs.25 on 18/10/1935 under Exhibit I. The above mulgeni has been surrendered under Exhibit II dated 5/4/1937. It is only after the above surrender took place, the plot has been acquired by the Government. If we take the face value of Exhibit I, we find the extent that has been let out under Exhibit I is acres 2 besides a road of the length of half a furlong towards the sea on the west which the L.A.Officer in Exhibit A seems to have taken as measuring 9 cents. The claimant on the assumption that the whole of the land covered in Exhibit I has been acquired by the Government, has claimed the value of the land at Rs.750/- being 30 years' purchase. When it is found that the total extent of the land covered in Exhibit I is 2 acres and 9 cents, it is not possible to accept Rs.25/- as the mulgeni rental for the portion acquired, viz., acre 1-60 cents. The mulgeni rental will be less proportionately.

5. I am not also prepared to accept from the evidence that the mulgeni rental fixed in Exhibit I represents the correct rental. Because, according to the evidence, the lessees under Exhibit I took it on mulgeni for a fish curing yard, and have surrendered it about 1½ years later when they found that the Government was proposing to acquire this plot. On the claimant's side the document Exhibit III was produced as being the mulgeni document of a plot in the same village, of 70 cents for a mulgeni rental of Rs.6/6/- on 8/7/1921. The plot covered in Exhibit III is said to be 1½ furlongs off the plot acquired, and though the lessor under Exhibit III has sworn as R.W.1 that the acquired plot is superior to the plot covered in Exhibit III, both are admitted to be sandy plots. The plot acquired is about 3 furlongs from the public road. Though Exhibit III purports to state that a premium of Rs.60/- was paid, the mulgeni

rental of Rs.6/6/- together with interest on Rs.60/- will make up a rate of nearly Rs.10/- for 70 cents. Hence the evidence of R.W.1 that the land acquired will yield a geni Rs.20/- per acre if let on mulgeni appears to be an exaggeration.

6. P.W.3 is one of the executants of Exhibit I. He says that the tenants under Exhibit I did not get possession of the land as per Exhibit I, and they executed the sodachit Exhibit II. He says that the property covered in Exhibit I was got by them for fish trade as the land was extensive and they anticipated that the Government would acquire the holding for fish curing yard. It appears from the evidence that the Government had objection to acquiring mulgeni plot for fish curing yard, and they have therefore executed the sodachit so that the Government may acquire it directly as the Warg property of the claimant. When the mulgenichit has been taken by the tenants with the idea of getting a profit in case it is acquired by the Government, naturally a higher rate of rent should have been agreed to be paid by them, and I do not think that the mulgeni rental fixed in Exhibit I represents the correct data for determining the valuation of the site which has been acquired.

7. I do not also give much credit to Exhibit E, a sale deed which has come into existence on 5/4/1939 long after the present acquisition proceedings, under which P.W.3 purports to ha purchased 75 cents for Rs.150/- out of which Rs.20/- is said to represent the value of trees. P.W.3 is a person who has taken the contract of the construction of the fish curing yard for Rs.1,125/-, and though the date of the contract was in July or August 1939, the tender was given by him in February 1939. He has taken Exhibit E after the date of the above tender, while the acquisition proceeding was towards the end of 1937. So I

do not attach much weight for the value disclosed by Exhibit E.

8. The correct clue seems to be afforded by the other evidence adduced in the case. R.W.2 the agent of the claimant has deposed that the whole land out of which acre 1-60 cents has been acquired, consists of an extent of 14 and odd acres, that the remaining land has been let on chalgeni to several tenants, and that the chalgeni rental for 25 cents is Re.1-1-0 or Rs.1-2-0. In re-examination it has been elicited that one of the conditions in the chalgenichits is that a tenant should effect improvements and should not claim any compensation for improvements at quitting. This seems to be an extraordinary condition which cannot be accepted, unless the chalgeni leases, if any, had been produced and the condition is proved to have been incorporated in such chalgeni leases. One of the chalgeni tenants was examined as P.W.2. Though he swears that the chalgeni lease rent is Re.1-0-8 for 25 cents or 30 cents, it has not been elicited from him in cross-examination that the condition of the chalgeni lease is that the cost of the improvements should not be claimed by the tenant when quitting. If there is really any such condition, there will be no inducement for the tenants to improve the land, and it is not likely that any such condition which acts as a set back to the effecting of improvements in the land would have been actually entered into.

9. The other point which was sworn to by R.W.2 the agent of the claimant is that each tenant should offer free labour to the Mutt for 30 days in the year, the tenant being supplied with one meal a day. It has no doubt been elicited from the evidence of P.W.2 the tenant that he has

to

to render bitti service for 30 days in the year. The bitti service appears to be that the tenant has to go to the landlord at 10 A.M. and return at about 3 P.M. He is given one meal or coffee and he returns. The bitti service appears to be (be) more or less nominal, and if at all there is any value which can be attached to such bitti service, the rent of Re.1-1-0 or 1-2-0 for 25 cents may be treated to be Rs.2/- for 25 cents inclusive of the value of the free labour. I do not think that the rent can be estimated to be Rs.4/- for 25 cents without bitti service as deposed to by P.W.2. P.W.2, though examined on behalf of the Government, appears to have leanings towards his landlord because he has sworn that the geni which he pays is Re.1-0-8 for 25 cents or 30 cents, while he has given statement in Exhibit B before the Revenue Inspector, that the rent is Re.1-0-8 for about 50 cents. The claimant should have accounts relating to the rentals received from these tenants, and if they had been produced, they would have shown the exact rent paid by each tenant. Further, the production of lease deeds would have shown the extent of each holding. Having regard to the evidence of P.W.2 and R.W.2, and the statement Exhibit D, it may be fairly assumed that the rent may be taken to be Rs.4/- for about 50 cents, calculating also the value of any bitti service. Since the extent that is acquired is acre 1-60 cents, Rs.12/- may be taken to correctly represent the rental value of the land acquired. The claimant has claimed 30 years' capitalized value, whereas the L.A.Officer has taken 25 years' capitalized value in Exhibit A. I am of opinion that 25 years' purchase would be reasonable compensation. I am therefore of opinion that a sum of Rs.300/- will be reasonable compensation for the land acquired.

10. The claimant has claimed Rs.300/- on the ground that the acquisition injuriously affects the rest of his property. As already stated, there are three statements of the claimant

before the L.A. Officer. The first statement is dated 11-5-1937. In that statement what is mentioned is that by reason of the acquisition, the improvements effected round about the land acquired will become damaged, and there will be impediment to effect further improvements round about the land acquired. It is also stated that the form of the land also becomes bad. There is no other prejudice mentioned in that statement. This statement is relied upon in the statement of the claimant dated 13/9/1937 for claiming Rs.300 damages for injurious affection. The statement dated 13-9-1937 is relied upon in the petition dated 4-4-1938 under Section 18 of the L.A.Act. Even in the written statement filed in this court, it is not stated how the acquisition injuriously affects the rest of the property of the claimant, though Rs.300 compensation has been claimed for such injurious affection. It is only during the trial, it has been elicited from the evidence of R.W.1 that the rest of the land would be affected by the smell of the fish by reason of the fish curing yard. R.W.2 has added that the fish curing yard will emit bad smell which will reduce the demand for the other adjacent plots R.W.3 who was the former Shanbhogue of the claimant for a period of 20 years, has also deposed that the acquisition of the plot will affect injuriously the health of those living around it, and the price of the rest of the lands will fall in value. The evidence of P.W.3 is that there would be bad smell only if the fish is stored unsalted, that the fish is not stored in the fish curing yard without being salted, and the price of the adjoining lands will not be affected by the above acquisition. The residents in the adjoining locality appear to be mostly fishermen. I do not think when the Government is managing the fish curing yard, the fish would be stored without being salted or without taking proper precaution against the

emmission

emission of bad smell. The claimant himself in his statement dated 13-9-1937 has stated that in view of the acquisition contemplated by the Government for the fish curing yard, the land was not subsequently leased out to others. The claimant himself seems to have been awaiting the acquisition, and he must have known that the formation of a fish curing yard would be a nuisance if it was really a nuisance. I am not satisfied from the evidence that the other part of the land of the claimant will be injuriously affected on account of this acquisitio The plan Exhibit B shows that there is access to the remaining land on all the sides, and I am therefore of ℓ opinion that no compensation can be given on account of the acquisition injuri--ously affecting the remaining land of the claimant.

11. In the result, it is ordered that an additional compensation of Rs. 170 with 15 per cent. solatium, and interest on both at 6 per cent. per annum from 6-4-1938 up to the date of deposit will be awarded to the claimant. The claim for enhancement in respect of other items, and the claim for damages are dismissed.

Dictated to shorthand-writer, and pronounced in open court this the 21st day of December 1939.

Sd/- D.S.Raja Ray,

PRINCIPAL SUBORDINATE JUDGE.

PETITIONER'S EXHIBITS.

A.	25-10-1938	L.A.C.Ref.C.No.4023-37-B.
B.	16--4-1937	Sketch prepared by the Revenue Inspector, Moolky.
C.	do	Valuation statement prepared by do
D.	do	Statement of Puva Marakala and others recorded by the Revenue Inspector, Moolky.
E.	5--4-1939	Registered sale deed executed by Padmanabha in favour of Duggappa Narayana (P.W.3).

RESPONDENT'S EXHIBITS.

RESPONDENT'S EXHIBITS.

I. 18-10-1935 Registered mulgenichit executed by Duggapa Marakala and others.

II. 5--4-1937 Registered sodachit executed by Duggappa Marakala and others to claimant.

III. 8--7-1921 Registration copy of Mulgeni counter-part executed by Kittappu Sheregara to Gopala-krishnaya.

PETITIONER'S WITNESSES.

1. Sayyad Mahammad (Revenue Inspector).
2. Puva Marakala.
3. Duggappa Narayana.

RESPONDENT'S WITNESSES.

1. Gopalakrishna.
2. Srinivasa Pejathaya.
3. Anathaya.

Sd/- D.R.Raja Rau,

PRINCIPAL SUBORDINATE JUDGE.

Exd. A. Pinto.

(True copy)

Dev. Dept.

Subj:- Fish curing yard at Mowlky Acquisition of land

w 19363 (1)/40.

HH 1-2 CA

From the D.F. No 2077-F/40-1 dt 15.7.40)

To A.S.

vide para 2 p 2 CA

The has asked for the sanction of Govt. for an expenditure of Rs. 265-0-3 in connection with the acquisition of land for locating the fish curing yard at Mowlky. The expenditure is debitable to the

v p 466 of C.B. & for 1940-41 (not printed)

head Loans and advances bearing interest. g. Miscellaneous loans and advances D. Loans relating to the Fisheries Dept. Advances to fish curers for storage shed There is no provision in the B. for 1940-41 under the above head to meet the expenditure. It may be met by re-appropriation from the savings which may accrue later in the year under "Grant XXXVIII Loans and Advances bearing interest" or by framing a supplementary grant. A call entry may be made ~~for the amount~~ on 15.10.40 for taking further action regarding provision of funds

annas two) being the costs incurred by the Govt. Pleader Mangalore, in connection with the case

2. The expenditure should be debited to the head "Loans and advances bearing interest - 8 - Miscellaneous Loans and advances - D. Loans relating to the Fisheries Dept. - Advances to fishermen for storage sheds". Orders will be issued later as regards provision of funds in the current year. The A.G. is authorised to admit the expenditure in audit pending provision of funds

p. 466 of C B of Misc. 1940-41 (Misc. Heads)

Finance to be addressed in the first week of Feb 1941. (Call entry made 30-1-41)

3. The amount should be recovered from the crew by way of cess

Sd/ 24/1/40.

Sd/ 25/1

NS 25-1-1940

Sd/ 1.8 CW

To The D. F.

8. Thro' Govt. Fin. Dept.

Call entry. 15.10.40.

Entered in C.B. (No. 76)

Sd/ illegible.

& close

Sd/ 12/8

Further add
sheet

DRAFT FOR APPROVAL.

O.F.10.
Dev. 84

	Date.	Initials.
When received for fair copying ...		
When copied ..		
When examined...		
When signed ...		
When despatched.		

SUBJECT:—

Fisheries

Fish curing yard - Moolky - Acquisition of site - Additional ~~amount~~ and costs - ~~Expenditure~~ Compensation - ~~Payment~~ - Sanctioned.

READ AGAIN G.O. No. 545(4.) Dev, dated 6. 3. 1937.

" " " 19.

READ *ALSO*:—

No. 19330/40 From the D. F., No. 2077-F/40-1 dated 15. 7. 1940 ~~1-2-1~~

" " " " " " 19.

" " " " " " 19.

~~Order~~ ~~Resolution~~ ~~Ms.~~ ~~Rout.~~ No. 1765, dated 31. 7. 19 40.

Sanction is accorded to the deposit in Court of a sum of Rs. 221-14-3 (rupees two hundred and twenty one, fourteen and pies three) being the additional amount (with solatium and interest) of compensation awarded by the Subordinate Judge, Mangalore, in respect of the acquisition of land required for the location of the fish curing yard at Moolky. Sanction is also accorded to the payment of Rs. 43-2-0 (rupees forty three and

'A' on p. 3 ✓

'B' on p. 3 ✓